

2. GENERAL REGULATIONS

2.3 OBLIGATIONS OF THE CUSTOMER (Cont'd)

2.3.8 CLAIMS AND DEMANDS FOR DAMAGES

- A. With respect to claims of patent infringement made by third persons, the customer shall defend, indemnify, protect and save harmless the Telephone Company from and against all claims arising out of the combining with, or use in connection with, the services provided under this Tariff, any circuit, apparatus, system or method provided by the customer.
- B. The customer shall defend, indemnify and save harmless the Telephone Company from and against any suits, claims, losses, damages, including punitive damages, attorney fees and court costs by third persons arising out of the construction, installation, operation, maintenance, or removal of the customer's circuits, facilities, or equipment connected to the Company's services provided under this Tariff. Included, without limitation, are Workmen's Compensation claims, actions for infringement of copyright and/or unauthorized use of program material. Also included without limitation are libel and slander actions based on the content of communications transmitted over the customer's circuits, facilities or equipment. In addition, proceedings to recover taxes, fines, or penalties for failure of the customer to obtain or maintain in effect any necessary certificates, permits, licenses, or other authority to acquire or operate the services provided under this Tariff shall be included in the indemnification. However, the foregoing indemnification shall not apply to suits, claims, and demands to recover damages for damage to property, death, or personal injury unless such suits, claims or demands are based on the tortious conduct of the customer, its officers, agents or employees.

(Filed under Transmittal No. 2.)

Issued: August 7, 2000

Effective: August 8, 2000

1801 California Street, Denver, Colorado 80202

2. GENERAL REGULATIONS

2.3 OBLIGATIONS OF THE CUSTOMER

2.3.8 CLAIMS AND DEMANDS FOR DAMAGES (Cont'd)

- C. The customer(s) shall not attempt to hold the Company or the Company's employees, agents, contractors or invitees liable for, and shall hold harmless and indemnify the Company and its employees, agents, contractors or invitees from and against, demands, claims, causes of action, liabilities (including punitive damages), costs or expenses (including reasonable attorneys fees), incurred by customer(s), its employees, agents, contractors, or invitees, arising from any acts, omissions or negligence of customer, its agents employees, contractors, invitees or visitors or any violation or non-performance of any law, ordinance or governmental requirement of any kind; or any injury or damage to person or property of customer, its agents, employees, contractors, invitees or visitors, arising out of the use of Company services or property, where the injury or damage is caused by any reason other than the willful misconduct of Company its agents, employees or contractors.

Except as provided herein, any and all real or personal property damage sustained by an interconnector shall be recovered through the interconnector's own insurance coverage, as mandated in 2.3.13.

2.3.9 COORDINATION WITH RESPECT TO NETWORK CONTINGENCIES

The customer shall, in cooperation with the Company, coordinate in planning the actions to be taken to maintain maximum network capability following natural or man-made disasters which affect telecommunications services.

(Filed under Transmittal No. 2.)

Issued: August 7, 2000

Effective: August 8, 2000

2. GENERAL REGULATIONS

2.3 OBLIGATIONS OF THE CUSTOMER (Cont'd)

2.3.2 OWNERSHIP OF FACILITIES

Facilities utilized by the Company to provide service under the provisions of this Tariff shall remain the property of the Company. Such facilities shall be returned to the Company by the customer whenever requested, within a reasonable period following the request, in as good condition as reasonable wear will permit.

(Filed under Transmittal No. 2.)

Issued: August 7, 2000

Effective: August 8, 2000

1801 California Street, Denver, Colorado 80202

EXHIBIT 8

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 7
)	
WINSTAR COMMUNICATIONS, INC., et al.,)	Case No. 01-1430(JJF)
)	Jointly Administered
Debtors.)	
)	Hearing:
)	4/16/02 @ 10:00 A.M.

**OBJECTION OF BELL SOUTH TELECOMMUNICATIONS, INC. TO CHAPTER 7
TRUSTEE'S MOTION FOR ORDER EXTENDING TIME WITHIN WHICH
TRUSTEE MUST ASSUME OR REJECT**

BellSouth Telecommunications, Inc. ("BellSouth") hereby objects to the Chapter 7 Trustee's Motion to Extend Time Within Which the Trustee Must Assume or Reject Executory Contracts and Unexpired Leases Pursuant to 11 U.S.C. Section 365 of the Bankruptcy Code ("Motion"). BellSouth objects to the Motion for the same reasons set forth in the Objection Of Qwest Corporation to the Motion.

Wherefore, BellSouth requests that the Court deny the Motion.

Respectfully submitted,

MICHAEL P. MORTON, P.A.



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1203 North Orange Street
Wilmington, Delaware 19801
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-and-

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& HOLZWORTH
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EXHIBIT 9

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SHANGHAI

April 12, 2002

Burl W. Haar
Minnesota Public Utilities Commission
350 Metro Square Building
121 Seventh Place East
St. Paul, MN 55101-2147

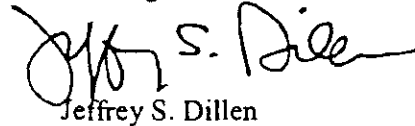
Re: In the Matter of Qwest Corp. and Winstar Communications, LLC, Adoption
Letter for Previously Approved Interconnection Agreement
PUC Docket No. P421,5246/IC-02-324

Dear Mr. Haar:

Enclosed for filing in the above-referenced docket please find original and 15 copies of Qwest's Motion to Clarify or in the Alternative to Withdraw the Joint Application with exhibits.

If you have any questions, or require additional information, please do not hesitate to contact me.

Best regards,


Jeffrey S. Dillen

JSD:sl
Enclosures

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF MINNESOTA**

Gregory Scott
Edward A. Garvey
Marshall Johnson
LeRoy Koppendraye
Phyllis Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Qwest Corp. and Winstar
Communications, LLC, Adoption Letter for
Previously Approved Interconnection
Agreement

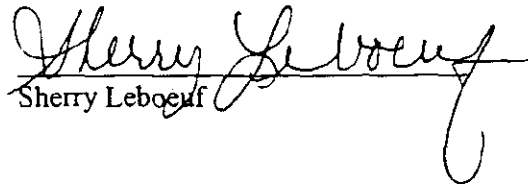
PUC Docket No. P421,5246/IC-02-324

AFFIDAVIT OF SERVICE

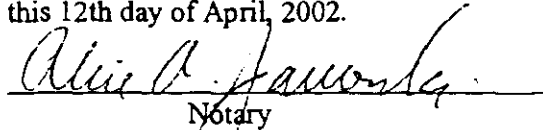
STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

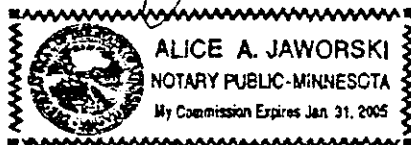
Sherry Leboeuf, being first duly sworn, deposes and says;

That on the 12th day of April 2002, at the City of Minneapolis, State of Minnesota, she served the annexed filing of Qwest Corp. identified on the filing letter, by either delivery in person, or facsimile or electronic mail followed by mailing to them a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office at Minneapolis, Minnesota, directed to said addressees their last known addresses.


Sherry Leboeuf

Subscribed and sworn to before me
this 12th day of April, 2002.


Notary



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FAX: 651-297-7073

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF MINNESOTA**

Gregory Scott	Chair
Edward A. Garvey	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendraye	Commissioner
Phyllis Reha	Commissioner

In the Matter of Qwest Corp. and Winstar
Communications, LLC, Adoption Letter
for Previously Approved Interconnection
Agreement

PUC Docket No. P421,5246/IC-02-324

**QWEST'S MOTION TO CLARIFY OR IN THE ALTERNATIVE TO
WITHDRAW THE JOINT APPLICATION**

Qwest Corporation ("Qwest") respectfully requests permission to clarify or, in the alternative, to withdraw the Joint Application for Approval of Interconnection Agreement Under § 252 between Winstar Communications, LLC and Qwest, filed March 8, 2002.

INTRODUCTION

1. As the Commission is aware, Winstar Communications, LLC ("New Winstar") is a subsidiary of IDT Corporation ("IDT"); the latter is buying certain assets of Winstar Communications, Inc. ("Old Winstar") as part of a pending bankruptcy proceeding in the United States Bankruptcy Court for the District of Delaware.¹ The Bankruptcy Court has issued several orders prescribing the procedures of the sale in accordance with the Bankruptcy Code (explained in more detail below). Pursuant to these orders, IDT must either (1) assume the interconnection agreements of Old Winstar

¹ *In re Winstar Communications, Inc., et al.*, Debtors, Chapter 11, Case No. 01-01430 (JJF) (Hereinafter "Bankruptcy Proceedings").

and cure any outstanding balance associated with those agreements, or (2) reject and terminate those agreements and start anew in ordering and acquiring facilities, circuits, etc. Both options encompass potential benefits, responsibilities and risks, but the court's order is clear, IDT must choose one or the other and then fulfill the obligations that come with that choice.

2. To date, IDT has neither assumed nor rejected the Old Winstar's interconnection agreement in Minnesota. While Qwest is committed to working with New Winstar in accordance with federal law and the Bankruptcy Court's orders, Qwest has recently become concerned that IDT is attempting to subvert the Bankruptcy Court's orders by taking advantage of the simultaneous benefits of the mutually inconsistent assume and reject options, without fulfilling the concomitant obligations of either.

3. New Winstar recently approached Qwest's Wholesale Division and asked to opt-in to a new interconnection agreement (the subject of the Joint Application). This action would appear to anticipate a rejection and termination of the Old Winstar agreement. If rejection and termination is, in fact, New Winstar's intent, then New Winstar will stand in the shoes of a brand new CLEC. Facilities, circuits, etc. provisioned under the Old Winstar interconnection agreement will be terminated. New Winstar, of course, can order new facilities and circuits under its new interconnection agreement, but the realities of the time it takes to provision these items (no different than for any new CLEC ordering new facilities and circuits) would inevitably lead, at least temporarily, to a discontinuance of service to Old Winstar's customers that New Winstar

might seek to serve in the future, notwithstanding its decision to reject current agreements.

4. The other alternative is for IDT's subsidiary to assume the Old Winstar interconnection agreement, pay the requisite cure payments, and continue to provide service under existing facilities and circuits. Under this scenario the risk of potential disconnection of the Old Winstar customers is alleviated, but IDT would of course be required to make cure the payments established by the Bankruptcy Court.

5. IDT's most recent actions have led to concern that IDT may be attempting to have their cake and eat it too by ostensibly rejecting the Old Winstar agreement, thus avoiding the cure payments, and then opting into a "new" interconnection agreement and demanding either (i) that Qwest permit New Winstar to continue to offer service over the exact same facilities, circuits, etc. of the Old Winstar (thus accomplishing a *de facto* assumption), or (ii) seek to "expedite" the processing of New Winstar's request for new facilities under its new interconnection agreement (receiving preferential treatment over other CLECs and thereby accomplishing the same result). This type of subterfuge is in direct violation the Bankruptcy Court's order, effectively requires Qwest to absorb the economic consequences of Old Winstar's defaults, and gives IDT a windfall. Qwest has objected to this "end around" before the Bankruptcy Court and the court heard argument on Thursday, April 11, 2002.²

² Argument is scheduled to continue on Monday, April 15, 2002, and Qwest anticipates an order from the Bankruptcy Court on these issues some time next week.

6. Through this motion, Qwest seeks to inform the Commission of the maneuverings, advise it of the status of the Bankruptcy Proceedings, and alert it to the risk of temporary discontinuance of service to customers if IDT rejects the Old Winstar agreement and begins to operate under the new interconnection agreement that is the subject of the Joint Application. Qwest submits that neither the avoidance of the Bankruptcy Court's orders, nor even a temporary discontinuance of service to customers, is necessary or in the public interest under these circumstances, especially in light of the seamless transition permitted by the assumption of the Old Winstar Minnesota Interconnection Agreement. Consequently, Qwest respectfully requests to withdraw the Joint Application, so that IDT can follow appropriate assumption of the Old Winstar agreement in compliance with the Bankruptcy Court's order, or in the alternative to clarify to the New Winstar that any effort to subvert the Bankruptcy Court will result in temporary discontinuation of service to Old Winstar's customers.

BANKRUPTCY PROCEEDINGS BACKGROUND

7. On April 18, 2001, Winstar Communications, Inc. and certain affiliates and subsidiaries (collectively referred to herein as "Old Winstar") each filed a voluntary petition for relief under Title 11 of the United States Code before the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Proceedings").³

8. As of the date it filed for bankruptcy, Old Winstar (through its subsidiary Winstar Wireless, Inc.) had entered into an interconnection agreement with Qwest to

³ On or about January 24, 2002, the Bankruptcy Proceedings were converted to those under Chapter 7 of the Bankruptcy Code.

provide an array of resale and facilities-based telecommunications services in the State of Minnesota. See Interconnection Agreement Between U S WEST Communications, Inc. and Winstar Wireless of Minnesota, Inc., executed November 6, 1997 ("Minnesota Interconnection Agreement").

9. As of the date it filed for bankruptcy, Old Winstar owed Qwest Corporation (on a region-wide basis) approximately \$1.5 million for telecommunication services and facilities provided under interconnection agreements between Qwest and Old Winstar. Approximately \$260,000.00 of this sum was attributable to costs owed by Old Winstar to Qwest for services under Old Winstar's Minnesota Interconnection Agreement.

10. Pursuant to the Bankruptcy Proceedings Old Winstar is subject to several agreements and orders, including but not limited to, the following:

- Old Winstar and Qwest Corporation entered into a Stipulation and Order ("Stipulation and Order") which required Winstar Communications, Inc. to pay Qwest Corporation on a current basis pending the Bankruptcy Proceeding.
- Old Winstar was permitted to sell its assets subject to certain conditions, including those set forth in the Bankruptcy Court's Order Authorizing (i) Sale of Certain of Debtors' Assets Free and Clear of Liens, Claims Encumbrances, And Interests, (ii) Approving Cure Amounts with Respect to Certain Executory Contracts and Unexpired Leases, (iii) Authorizing the Debtors to Enter into and Approving Management Agreement, (iv) Approving Regulatory Transition Process and (v) Granting Related Relief. See *In re Winstar Communications, Inc. et al., Debtors*, Chapter 11, Case No. 01-1430-JJF (Bankr. D. Del. 2001)("Sale Order")(attached hereto as Exhibit A)

11. Old Winstar breached the Stipulation and Order by failing to remain current on service costs owed to Qwest totaling over \$3.8 million, including \$690,000.00 under the Minnesota Interconnection Agreement.

12. Under the Sale Order, IDT acquired essentially all of Old Winstar's assets, and agreed to operate Old Winstar's business during a 120-day period (beginning in December 2001 and expiring on April 19, 2002) pending the transfer of necessary federal and state regulatory licenses ("Transition Period").

13. During the Transition Period, IDT was required to pre-pay for all charges for services (including those provided under interconnection agreements), and service providers (such as Qwest) can not terminate service based on Old Winstar's defaults prior to closing, December 19, 2001.

14. Also during the Transition Period, IDT may direct Old Winstar to seek an order whereby Old Winstar can assume and assign to IDT any executory contracts (such as interconnection agreements), provided that IDT cures any payments due under the assigned agreements:

The Buyer shall have the ability during the Regulatory Compliance Period to direct the Debtors to seek the entry of one or more orders of the Court authorizing the Debtors to assume and assign to the Buyer any executory contract or unexpired lease to which the Debtors are a party, provided that the Buyer shall be solely responsible for paying any cure payment that is payable in connection with any such assumption and assignment.

*See Sale Order at 19 (emphasis in original).*⁴

15. IDT may also choose to reject existing executory contracts by taking affirmative actions, including, but not limited to, providing prior written notice to the non-debtor party to the agreement. If IDT rejects an agreement, IDT must enter into a new agreement just as if it were a new carrier, with no special priorities, and no rights to use pre-established circuits and business processes. If IDT rejects an interconnection agreement, the agreement is terminated. IDT then must start with a clean slate and pay for replacement circuits and facilities and have these purchased services and elements re-provisioned:

[I]n the event that any contract with any Service Provider that is a telecommunications carrier shall be rejected: (i) no termination liability shall arise, (ii) such telecommunications carrier shall provide telecommunications services in accordance with, and to the extent required by, applicable law in a non-discriminatory manner, and (iii) such telecommunications carrier will charge the Buyer for replacement circuits the lower of the actual costs and tariff rates to set up or establish such replacement circuits.

See Sale Order at 18-19 (emphasis added).

⁴ Qwest understands that the "assume and assign" provisions apply to interconnection agreements entered under the Telecommunications Act of 1996, and further that if IDT were to have Old Winstar assume and assign its interconnection agreement(s) with Qwest to IDT, that the applicable cure payment due from IDT would be approximately \$ 5.4 million.

16. For the entire Transition Period, IDT has not made its choice regarding interconnection agreements: It has neither assumed them, nor rejected them. The Transition Period expires April 19, 2002.

IDT'S ACTIONS IN MINNESOTA

17. As the Commission is aware, New Winstar (Winstar Communications, LLC) is a subsidiary of IDT, and IDT intends to use New Winstar to operate the former assets and facilities of Old Winstar that IDT acquired through its asset purchase pursuant to the Bankruptcy Proceedings.⁵ New Winstar's petition to acquire the assets and authority of Old Winstar was approved by the Commission on March 20, 2002, on the condition that New Winstar assume responsibility for any unpaid regulatory expenses of Old Winstar.⁶

18. New Winstar also recently notified the Commission that it wished to discontinue service to those customers of the Old Winstar in Minnesota that the New Winstar does not deem profitable.⁷

19. On or about January 30, 2002, Winstar Communications, LLC ("New Winstar"), through counsel, sent a letter to Qwest's Wholesale Division, seeking to enter into a new interconnection agreement with Qwest by opting into the interconnection

⁵ See *In the Matter for Approval of Winstar Holding, LLC to Acquire the Assets and Authority of Winstar Wireless, Inc.*, Comments of the Department of Commerce, MPUC Docket No. P5246/PA-02-83, March 5, 2002 ("Acquisition Petition"), pp. 1-3.

⁶ See *In the Matter for Approval of Winstar Holding, LLC to Acquire the Assets and Authority of Winstar Wireless, Inc.*, Order Approving Acquisition Petition, Docket No. P5246/PA-02-83, March 20, 2002.

⁷ See *Notification of Winstar Wireless, Inc. and Winstar Communications, LLC of the Discontinuance of Certain Services in Minnesota*, MPUC Docket No. P5246/M-02-365, filed March 18, 2002.

agreement between Sprint Communications Company LP and Qwest Corporation fka U S WEST Communications, Inc. in its entirety. See Affidavit of Larry Christenson ("Christenson Affidavit," attached hereto as Exhibit B) at ¶ 4.

20. Relying on New Winstar's letter and the determination that the existing interconnection agreement between Qwest and Winstar Wireless, Inc. is month-to-month, Qwest's Wholesale Division handled New Winstar's request as a routine opt-in request, executing the standard opt-in letter agreement ("Opt-in Letter"), and forwarding the Opt-in Letter onto local Qwest counsel for filing with the Minnesota Public Utilities Commission. See Christenson Affidavit at ¶ 5.

21. On March 8, 2002, Qwest filed the Joint Application for Approval and Adoption of Agreement for Local Wireline Interconnection between Winstar Communications, LLC and Qwest Corporation ("Joint Application").

22. When it approached Qwest's Wholesale Division and requested to enter into the Opt-in Letter, New Winstar did not mention the Bankruptcy Proceedings or the fact that New Winstar is a subsidiary of IDT which is directly subject to the jurisdiction and orders of the Bankruptcy Proceedings, including orders which define appropriate action with regard to interconnection agreements. See Christensen Affidavit at ¶ 7.

23. Had Qwest's Wholesale Division been informed by New Winstar that it was subject to an order of the Bankruptcy Court or otherwise subject to special conditions with regard to entering into an interconnection agreement, Qwest's Wholesale Division would not have handled Winstar's request as a routine matter, and would not have directly executed the Opt-in Letter. See Christensen Affidavit at ¶ 8.

24. New Winstar requested Qwest to change the name on Old Winstar's accounts (governed by Old Winstar's interconnection agreements) to New Winstar, and to assign the Old Winstar's circuits to New Winstar. *See* Letters from Stephen Murray to Qwest, dated February 26, March 27 and March 28, 2002, attached hereto as Exhibit C. Given the contrary order of the Bankruptcy Court, Qwest declined and suggested that New Winstar follow the appropriate assumption process under the Bankruptcy Court's Sale Order.

25. Qwest believes that IDT is continuing its attempt to evade its obligation under the Bankruptcy Code and applicable Bankruptcy Court's order by seeking to opt-in to a pre-existing agreement to achieve the benefits of the assignment of Old Winstar's circuits and facilities without assuming the responsibilities that go with an assumption, including paying to Qwest the required cure payments.

26. Qwest has objected to IDT's actions before the Bankruptcy Court and is seeking to clarify and enforce IDT's specific obligations under Sale Order and the Bankruptcy Code with regard to entry into any new interconnection agreement(s) to operate Old Winstar's assets and facilities.⁸

⁸ On information and belief, IDT has attempted similar tactics with other incumbent local exchange carriers, and Qwest understands that these ILECs similarly filed objections before the Bankruptcy Court arguing against the manner in which IDT is handling the "assume and assign" period established by the court.

REQUESTED RELIEF

27. Pending the resolution of Qwest's objections with the Bankruptcy Court and any related hearings and proceedings commenced as a result of those objections, Qwest respectfully requests the withdrawal of the Joint Application.

28. Qwest believes that withdrawal is appropriate to avoid confusion, undue administrative process, and any impediments to the Bankruptcy Court's exercise of jurisdiction to enforce its orders.

29. Qwest respectfully request that the Commission direct IDT to accomplish its transition in Minnesota through the appropriate procedures as prescribed by the Bankruptcy Court. This will ensure a transparent transition to Old Winstar's Minnesota customers and to avoid any unnecessary discontinuance.

30. In the alternative, Qwest seeks to clarify that the action currently being pursued by IDT – starting from scratch by opting into an interconnection agreement – will result in at least some temporary discontinuance of service to Old Winstar's customers.

Respectfully submitted, April 12, 2002

QWEST CORPORATION

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DORSEY & WHITNEY, LLP

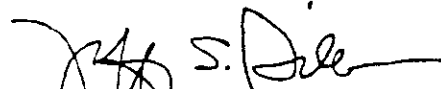

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EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	-----X
	:
In re:	:
	: Chapter 11
	:
WINSTAR COMMUNICATIONS, INC., <u>et al.</u> ,	: Case No.: 01-1430 (JJF)
	:
	: Jointly Administered
Debtors.	:
	:
	:
	:-----X

**ORDER AUTHORIZING (i) SALE OF CERTAIN OF THE DEBTORS'
ASSETS FREE AND CLEAR OF LIENS, CLAIMS ENCUMBRANCES,
AND INTERESTS, (ii) APPROVING CURE AMOUNTS WITH RESPECT
TO CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES,
(iii) AUTHORIZING THE DEBTORS TO ENTER INTO AND APPROVING
MANAGEMENT AGREEMENT, (iv) APPROVING REGULATORY
TRANSITION PROCESS AND (v) GRANTING RELATED RELIEF**

This matter having come before the court on (I) the motion (the "Original Motion"; terms not otherwise defined in this Sale Order shall have the meanings ascribed to such terms in the Original Motion) filed by Winstar Communications, Inc. and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), requesting the entry of (A) an order pursuant to sections 363(b) and 105(a) of title 11, United States Code (the "Bankruptcy Code") and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") (i) approving bidding procedures, including bid protections, (ii) approving the form and manner of notice of (a) the hearing to consider granting certain bid protections (the "Bid Procedures Hearing"), (b) the hearing on the sale of certain of the Debtors' assets (the "Sale Hearing"), (c) proposed cure payments and (d) assumption and assignment of executory contracts and unexpired leases, and (iii) scheduling the Sale Hearing,

and (B) an order authorizing and approving (i) the sale of certain of the Debtors' assets free and clear of liens, claims and encumbrances (the "Sale") and (ii) the assumption and assignment of certain executory contracts and unexpired leases, and (II) the supplement to the Original Motion filed with the Bankruptcy Court on December 14, 2001 (the "Motion Supplement", and together with the Original Motion, the "Motion") seeking entry of an order (i) authorizing the Debtors to enter into, and approving, a management agreement substantially in the form annexed to the Motion Supplement as Exhibit A (the "Management Agreement"), (ii) approving, and authorizing the Debtors to implement, the Debtors' proposed regulatory transition process (the "Regulatory Transition Process") and (iii) granting related relief, including an extension of the period under Bankruptcy Code section 365(d)(4) within which the Debtors may decide whether to assume or reject unexpired leases of nonresidential real property; and the Court having conducted a hearing on November 27, 2001, and having entered an order dated November 27, 2001 approving the Bidding Procedures; and an auction having been held at the offices of Shearman & Sterling, counsel to the Debtors, on December 5, 2001, in accordance with the Bidding Procedures previously approved by this Court; and following the conclusion of the Auction, the Debtors, in consultation with their financial advisors, and after consultation with counsel to each of the Creditors' Committee, the Agent for the Prepetition Lenders and the Agent for the DIP Lenders, having (i) reviewed each bid on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the Sale, and (ii) identified the bid of IDT Winstar Acquisition, Inc. (the "Buyer"), as set forth in the Asset Purchase Agreement, dated as of December 18, 2001 (the "Asset Purchase Agreement") as the highest and best offer for the Purchased Assets (as defined below in Paragraph H) at the Auction (the "Successful Bid"); and a hearing on the Motion

having been commenced on December 10, 2001 and continued on December 17, 2001 and December 18, 2001 (the "Sale Hearing"); and all interested parties having been afforded an opportunity to be heard with respect to the Motion; and the Court having reviewed and considered (i) the Motion, (ii) the objections thereto, if any, and (iii) the arguments of counsel made, and the evidence proffered or adduced at the Sale Hearing; and it appearing that the relief requested in the Motion and approval of the Sale of the assets to be acquired under the Asset Purchase Agreement (as defined therein, the "Purchased Assets") and the entry of an order approving the Sale (this "Sale Order") is in the best interests of the Debtors, their estates, creditors, and other parties in interest; and upon the record of the Sale Hearing, and these cases; and after due deliberation thereon; and good cause appearing therefor, it is hereby

FOUND AND DETERMINED AS FOLLOWS:¹

A. This Court has jurisdiction over the Motion and the transactions contemplated by the Motion pursuant to 28 U.S.C. §§157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(M). Venue of these cases and the Motion is proper pursuant to 28 U.S.C. §§1408 and 1409.

B. The statutory predicates for the relief sought in the Motion are sections 105, 363 and 365 of 11 U.S.C. §§101 et seq. (the "Bankruptcy Code") and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure.

C. As evidenced by the affidavits of service previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the Motion, the Sale Hearing, the Cure Notices, the Sale of the Purchased

¹ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed.R.Bank.P. 7052.

Assets and of the related transactions contemplated thereby (including without limitation the entry of the Debtors into the Management Agreement and the implementation of the Regulatory Transition Process) has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure; (ii) such notice was reasonable, sufficient, and appropriate under the circumstances; and (iii) no other or further notice of the Motion, the Sale Hearing, the Cure Notices, the Sale of the Purchased Assets and all the related transactions contemplated thereby (including without limitation the entry of the Debtors into the Management Agreement and the implementation of the Regulatory Transition Process) shall be required.

D. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested in the Motion has been afforded to all interested persons and entities, including (i) counsel for the Buyer, (ii) counsel for The Bank of New York, as Agent under the Pre-Petition Credit Agreement, (iii) counsel for Citibank, N.A., as agent under the DIP Credit Agreement, (iv) counsel for the Official Committee of Unsecured Creditors (the "Creditors' Committee"), (v) the Office of the United States Trustee, (vi) each party identified by the Debtors as a potential Buyer of the Purchased Assets that was contacted as part of the Sale process, (vii) all entities known to have any asserted lien, claim, encumbrance, alleged interest in or with respect to the Purchased Assets, (viii) all applicable federal, state and local taxing authorities; and (ix) all other entities that have filed requests for notices pursuant to Bankruptcy Rule 2002.

E. The Debtors (i) have full corporate power and authority to execute the Asset Purchase Agreement and all other documents contemplated by the Motion, (ii) have all of the corporate power and authority necessary to consummate the transactions contemplated by the